IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 11579 OF 2007

Dated : June 19, 2007

Between:

The Secretary,
Department of Atomic Energy,
Anushakthi Bhavan, CSM marg,
Mumbai and others

Petitioner

AND

Smt. G. Vijayalakshmi

Respondents

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 11579 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records pertaining to the order dated 28.03.2007 in OA No. 697 of 2006 on the file of the Central Administrative Tribunal, Hyderabad and to set aside the same, the petitioners – Department of Atomic Energy, filed this writ petition.

The O.A. was filed before the Tribunal by the respondent herein assailing action of the petitioners herein in not appointing her on compassionate grounds, even after her selection to the post of Attender.

The facts in nutshell are that the respondent is the wife of one Mr.G.Yadagiri, who worked as Tradesman in Nuclear Fuel Complex from 1972 and after having put in 30 years of service, he was medically invalidated and on his request, retired on medical invalidation from 17.4.2002. In the year 2002, the respondent applied for appointment to the post of Helper on compassionate grounds and subsequently she went on submitting representations, but to no avail. As such, in the year 2004, the said Yadagiri filed OA 330 of 2004 seeking appointment of the respondent, which according to her, was dismissed as withdrawn on 31.1.2005, on the assurance of the petitioners to consider her appointment. Consequently, the respondent was called for interview on

21.3.2005. According to the respondent, though she was selected, she was not given appointment order. As such she submitted a representation dated 16.5.2006 but the same was not responded. Therefore, she filed the OA.

The appointment, designation and retirement of the said Yadagiri, husband of the petitioner, is not in dispute. The submission of application for appointment on compassionate grounds by the respondent on 19.7.2002 is also not in dispute. It is stated by the petitioners that in view of the limited number of vacancies, the request of the respondent and others was rejected by the Screening Committee and the same was communicated to the respondent. The averment that the petitioners have assured Mr. Yadagiri for appointment of his wife subject to the condition of withdrawal of OA No. 330 of 2004, filed by him is denied. It is stated that Mr. Yadagiri voluntarily withdrew the said O.A. It is also stated that since compassionate appointments in respect of death cases were pending, at the behest of NFC Mazdoor Sangh, the consideration of appointment of the respondent was kept in abeyance.

The Tribunal on extensive consideration of the contentious issues allowed the O.A. and directed the petitioners to consider the case of the respondent and

give appointment to the post of Helper on the basis of selections held by the committee on 5.4.2005 within two months.

Admittedly, it is a case where the respondent's husband having put in thirty years of service, has lost his voice and got retired on medical invalidation and the compassionate appointment sought by the respondent was rejected by the Department on the ground that compassionate appointments even in respect of death cases could not be made in view of limited number of vacancies. The Tribunal did not find favour with the petitioners in respect of this contention and directed the petitioners herein to consider the case of the respondent and give appointment as Helper, pursuant to the selections made by the Committee on 5.4.2005.

Before this Court, learned Assistant Solicitor General of India, appearing on behalf of the petitioners contended that since compassionate appointments in respect of death cases are pending, the case of the respondent, whose husband has sought retirement on medical invalidation, cannot be considered in view of dearth of vacancies, inasmuch as such appointments have to be made within the quota of 5% of Group 'D' post

giving preference to the cases of death over medical invalidation.

On the other hand, the learned counsel for the respondent – applicant contends that there are vacancies available in the Department and even though the respondent was selected pursuant to the selections made by the Committee held on 5.4.2005, the petitioners, for the reasons best known to them, are not appointing the respondent. It is further contended that the family of the respondent is in a pathetic condition inasmuch as her husband lost voice and retired on medical invalidation as long back as on 17.4.2002. Contending so, the learned counsel for the respondent seeks to place reliance on an unreported judgment of the Apex Court in Appeal (Civil) No. 3451 of 2006 dated 27.02.2007 (*Food Corporation of India and another Vs. Ram Kesh Yadav & Another*), wherein the Apex Court observing that when the Food Corporation of India has not disputed the fact that the respondent therein was eligible and suitable for the post and in view of the scheme of appointment formulated by it, the Apex Court did not interfere with the direction given by the High Court to appoint the first respondent therein. However, in this case, the matter has extensively dealt by the Tribunal and held that in the scheme of

compassionate appointment, it is no where stated that first preference shall be given to the dependants of the deceased employees while providing compassionate appointment in 5% quota. It is not the contention of the petitioners that the respondent – applicant was not selected in the selection process by the Committee held on 5.4.2005. In view of these facts, we do not find any justifiable reason to interfere with the order of the Tribunal, impugned herein, and therefore, petitioners are directed to accommodate the respondent, in the post of Helper/Attender, preferably within a period of four weeks from today.

With this direction, the writ petition is disposed of. No order as to costs.

_____

T.MEENA KUMARI, J.

_____

G.CHANDRAIAH, J.

June 19, 2007
MAS